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> A good test, and probably the only objective test, for "same invention" is whether one of the claims could be literally infringed without literally infringing the other. If it could be, the claims do not define identically the same invention.

In re Vogel, 164 USPQ 619, 622 (CCPA 1970) (emphasis added). The facts of the Vogel case emphasize the point. There, the Examiner rejected a claim to a method of packing meat as being for the same invention as an issued claim to a method of packing pork. As the Court said,

> Is the same invention being claimed twice? The answer is no. The patent claims are limited to pork. Appealed claims 7 and 10 are limited to meat, which is not the same thing.

Id. (emphasis added).

In the context of the present case, per Vogel, if a structure could be built that literally infringes the rejected claims without literally infringing the claims of Applicant's parent case, there is no same invention double patenting. Such a structure or method clearly could exist, so the same invention double patenting rejection must fail.

For example, the claims from the parent case upon which Examiner relies all require both (1) that the account number obtained from the consumer be independent of how the consumer pays for the transaction, and (2) that access be selectively provided to the funds. None of the claims of the present case require both of those features. Indeed, these features are the separate subject of dependent claims 2 and 3 (method claims) whereas feature (1) is not claimed in any of

the presently pending apparatus claims. Thus, performing a method or providing a system as set forth in any of the claims of the present case would not also literally infringe any claim of the parent case unless, in addition, both of the above discussed features were included.

It is manifestly apparent, therefore, that a method or device could literally infringe claims of the present case without literally infringing the claims of the parent case. Same invention double patenting does not lie. Applicant respectfully submits that the same invention double patenting rejection is in error and should be withdrawn.

On the other hand, and to forestall an obviousness-type double patenting rejection, Applicant herewith submits his Terminal Disclaimer of the present case in view of all of his parent, grandparent, etc. cases related to the subject matter of this case.

CONCLUSION

Applicant respectfully submits that the rejections have been overcome or resolved and should be withdrawn. As the application is now in condition for allowance, Applicant respectfully requests a formal Notice of Allowance at the earliest possible date.

If this Amendment, for any reason, does not place the application in condition for allowance, Examiner is

respectfully requested to telephone the undersigned to discuss whatever questions may remain.

Respectfully submitted,

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